

The Real Estate Institute of New South Wales Limited

Submission response to the Short-term Holiday Letting in NSW Options Paper

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To: Director, Housing Policy
Department of Planning and Environment

Delivered: By email to STHL@planning.nsw.gov.au

1. INTRODUCTION

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (REINSW) and is in response to the *Short-term Holiday Letting in NSW Options Paper* released in July 2017.

The REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. The REINSW seeks to promote the interests of its members and the property sector on property related issues. In doing so, the REINSW believes it has a substantial role to play in the formation of regulatory policy in New South Wales.

This Submission has been principally prepared by members of the Property Management Chapter and Strata Management Chapter Committees of REINSW, as well as members involved in the short-term holiday letting specialisation. These members are licensed real estate professionals with experience and expertise in the residential property management, strata management and short-term holiday letting areas of real estate practice, which includes the leasing and management of residential properties.

It is REINSW's hope that suggestions in this Submission will be implemented to create an improved short-term holiday letting system for New South Wales.

2. KEY MATTERS FOR CONSIDERATION

The growth of the short-term holiday letting sector has been rapid and shows no signs of slowing down. The emergence of online booking providers has made it easier than ever before to book and pay for stays in private properties, and the development of the sharing economy has seen people become more willing to open the doors of their homes to strangers.

But, like many sectors impacted by technological disruption, regulation has not kept pace with the evolution and growth of short-term holiday letting. Regulation of the sector across New South Wales has lagged and can be described as piecemeal at best, with local councils taking different approaches to regulate the activity within their jurisdictions. With no standardised approach to short-term holiday letting, confusion often reigns.

The REINSW applauds the NSW Government's initiative in seeking industry and stakeholder input to create a robust and workable framework for this sector, which is one that will only continue to grow into the future. Such a framework will provide greater clarity and guidance for all stakeholders, and will ensure the economic benefits of the sector continue to flow while also managing the social and environmental impacts.

2.1 Taking a balanced approach

Short-term holiday letting impacts a variety of different stakeholders, including (but not limited to) owners, tenants, agents, online booking providers, insurers, local councils, neighbours and the wider community. It also impacts a range of different property types, such as lots in strata schemes and other community-style schemes, and detached dwellings.

Any reforms contemplated by the NSW Government regarding the regulatory framework relating to this sector must ensure the needs, interests and concerns of all stakeholders are represented and take account of differing property types.

In preparing this Submission, the REINSW has maintained a keen focus on the need to ensure fair and equitable outcomes across the sector to create a better short-term holiday letting system in New South Wales.

2.2 Impact on the housing market

a. Availability of longer-term rental housing

On 21 November 2016, the REINSW was invited by the then Minister for Innovation and Better Regulation, Victor Dominello, to a roundtable discussion regarding long-term tenancies. During the discussion, we were advised that the NSW Government was focused on encouraging security of tenure for tenants.

The REINSW believes that the rise of short-term holiday letting has the potential to threaten security of tenure for longer-term tenants. For example, data released by the University of Sydney's Urban Housing Lab recently found that short-term letting platforms have removed 6000 properties from the long-term rental market throughout New South Wales.

More owners are seeking to monetise their extra space by letting anything from a spare bedroom through to an entire property. And, it must be acknowledged, that in many instances the income they can earn from short-term holiday letting exceeds that which they can earn from the longer-term rental market. This is, very obviously, an attractive financial proposition. But a reduction in longer-term rental stock, due to removal of properties into the short-term holiday letting market, has the potential to adversely impact rental availability and runs counter to the NSW Government's stated focus on encouraging security of tenure for longer-term tenants.

By no means being alarmist, the REINSW understands that short-term holiday letting does not suit all property owners. We are not suggesting that there will be a mass exodus of properties from the longer-term market as owners seek to "make their fortune" in short-term holiday letting. However, the impact of short-term holiday letting on the security of tenure for longer-term tenants must be seriously considered.

b. Rental affordability

Flowing on from security of tenure is the issue of rental affordability. Affordability isn't just an issue for buyers, it's also a problem for renters – and it's one that may be exacerbated by the growth in short-term holiday letting.

Across New South Wales, rental stress is increasing as the gap between the median household income and the median rent grows. Rental stress is defined as a household spending more than 30 per cent of their total income on rent. With wage growth remaining low and rent prices increasing, many tenants often need to spend more than 30 per cent of their income on rent.

By way of example, for Sydney the rental affordability gap is illustrated by figures released by CoreLogic RP Data in September 2017:

RENTAL AFFORDABILITY GAP – SYDNEY	
Median yearly rent	\$31,096
Income required to avoid rental stress	\$103,653
Median household income	\$88,000
Affordability gap	\$15,653

Source: CoreLogic RP Data

Any reform to the regulatory framework for the short-term holiday letting sector must take account of the potential impact on rental affordability. As mentioned above, at paragraph 2.2(a), the amount an owner can earn in rent from short-term holiday letting is often more than they can earn from the longer-term market. With the movement of rental stock from the longer-term market to the short-term holiday letting market, it is not unforeseeable that rents in the longer-term market may increase as the number of properties available reduces and tenure becomes more difficult to secure.

2.3 Owners' rights

In balancing the interests of stakeholders, it must never be forgotten that owners should have the right to deal with their property in the manner they see fit. Providing an owner's actions or activities do not break the law and do not adversely impact on neighbours (whether they be owner occupiers or longer-term tenants), what right is there to impose restrictions?

Many owners engage in short-term holiday letting as a means of maximising their return on investment. In some instances, significant financial ramifications may flow if their ability to engage in this activity is curbed.

However, the need to protect owners' rights must be carefully balanced against those of other parties. The rights of the owners of short-term holiday letting properties should not exceed the rights of owner occupiers and longer-term tenants of neighbouring properties.

It should also not be forgotten that short-term holiday letting is a form of residential leasing that is akin to longer-term letting. In the case of longer-term letting, there are a plethora of controls and regulations in place to ensure the rights and responsibilities of owners and tenants are comprehensively protected. The REINSW respectfully asks: Why should it be any different with short-term holiday letting?

2.4 Protecting short-term holiday letting tenants

Booking a short-term holiday stay is a financial investment for the tenant. Unfortunately, there are those instances where, by the time the stay comes around, the property is not available. There are a whole range of reasons why this may happen (e.g. the property was sold by the owner after the booking was made).

What recourse does the short-term holiday letting tenant have to recoup their financial investment? The REINSW believes there must be a refund mechanism in place that can be enforced quickly and efficiently.

Where a short-term holiday letting property is managed by an agent, rental monies are kept in trust. The REINSW believes there should be something similar in place in the case of online booking providers and non-agent operators. This will ensure that short-term holiday letting tenants are not left out of pocket financially should the property become unavailable.

2.5 Protection of amenity

Whether the property in question is a detached dwelling or a strata scheme lot, the potential impacts of short-term holiday letting on the amenity of neighbours must be carefully considered.

The overall amenity of those living in neighbouring dwellings has the potential to be impacted due to a continual turnover of short-term holiday letting tenants who don't have the same vested interest in preserving the existing amenity.

Owner occupiers and longer-term tenants of neighbouring properties must be protected from the potential negative impacts of short-term holiday letting, and there must be consequences where amenity is adversely impacted. Any new regulatory framework must provide mechanisms to promptly correct any actions or activities by short-term holiday letting tenants that negatively impact amenity.

2.6 Enforcement

The REINSW does not believe that a blanket prohibition of short-term holiday letting is appropriate. However, for those property owners who do choose to short-term holiday let, there should be legislated parameters that are strictly enforceable.

Enforceability must be a key consideration in any new regulatory framework. While the REINSW certainly acknowledges that by far the largest proportion of short-term holiday letting is conducted without incident or problem, we need to ensure that there are mechanisms in place to quickly and effectively deal with those situations where things go awry.

a. Co-operation with online booking platforms

The REINSW suggests that online booking platforms should be legislatively bound to comply with certain obligations.

As an example, where the residential tenancy agreement relating to a dwelling specifies that short-term holiday letting (including sub-letting) is not allowed (except in circumstances where permission is granted by the owner), there should be a mechanism to notify the online booking platforms that this is the case. Then, if a tenant advertises the rental property, the online booking platform is obliged to notify the owner or managing agent, who then has the authority to instruct that the listing be removed immediately.

In the case of strata schemes, there could be a by-law in place that specifies obligations applicable to those owners who choose to engage in short-term holiday letting (e.g. the standard of behaviour expected of short-term holiday letting tenants). If the by-law is breached, then the owners corporation or strata managing agent has the authority to instruct the online booking platform that the listing be removed immediately. If the online booking platform doesn't do so, then the relevant regulatory entity should have the ability to fine the online booking platform for the breach.

b. Payment of bonds

Another potential mechanism to encourage enforcement is the payment of bonds. The REINSW submits that a bond should be paid by the short-term holiday letting tenant at the time of booking and making payment for their stay.

Payment of a bond by the short-term letting tenant would provide owners with the security of knowing they will be able to draw down on the bond should damage to the property occur. It would also impose a degree of accountability upon the short-term holiday letting tenant.

The bond would be paid to, and held by, the online booking provider or the managing agent, and would not be released back to the short-term holiday letting tenant until authorised by the owner.

2.7 Mandatory statutory review

The REINSW submits that any legislative reform regarding the short-term holiday letting sector should be subject to a mandatory statutory review.

When it was implemented, the *Residential Tenancies Act 2010* was subject to a mandatory statutory review after five years. Similarly, a five-year mandatory statutory review is applicable to the *Strata Schemes Management Act 2015* and the *Strata Schemes Development Act 2015*.

In the case of short-term holiday letting reform, the same should be the case. However, the REINSW submits that the period should be three years. Why? Because the sector is a fast-moving space that's being heavily impacted by developments in technology and the sharing economy boom. A shorter period for any mandatory statutory review will allow the government to take account of changes impacting the short-term holiday letting sector in a timely manner.

2.8 Mandatory landlords' insurance

The REINSW strongly believes that landlords' insurance should be mandatory for every property that is let in the short-term holiday letting sector.

While it must be acknowledged that there are risks associated with any form of residential letting, the risks associated with short-term holiday letting are heightened. Therefore, the policy should cover risks specific to the sector.

3. INDUSTRY SELF-REGULATION

There are a variety of different participants who advertise and let properties in the short-term holiday letting sector, including property owners, longer-term tenants and managing agents.

The REINSW submits that the majority of managing agents are already appropriately dealing with the short-term holiday letting properties they have under management. They apply the same degree of rigour to managing these properties as they do to those properties subject to longer-term tenancies. They understand their responsibilities and are equipped to quickly and effectively deal with potential impacts to amenity, complaints etc.

However, many properties in the short-term holiday letting market are not managed by agents. There are many private owners and longer-term tenants participating in the sector. How will industry self-regulation capture these non-agent operators? How will it ensure they are complying with their obligations?

Responsibilities and obligations need to be enshrined in legislation to ensure that agent and non-agent operators are regulated, monitored and subject to enforcement action. The REINSW does not believe that industry self-regulation will achieve this – a government regulator must be involved in some capacity. Co-regulation may be a better option, seeing the industry and government working together to achieve the best outcomes for the short-term holiday letting sector.

3.1 Code of conduct

The Holiday Rental Code of Conduct has been in place in NSW since 2012. The key objective of the Code of Conduct was to encourage acceptable standards of behaviour for short-term holiday letting tenants.

The Code of Conduct has never lived up to its promise. It's voluntary and, as such, there's no real incentive to adhere to it. Further, it is roundly viewed as "toothless" because it's not enshrined in legislation and so is not enforceable.

The REINSW agrees with the finding of the NSW Legislative Assembly Committee that the Code of Conduct should be strengthened. The REINSW also believes it should be enshrined in legislation, so it is a formal element of any regulatory framework for short-term holiday letting and can be effectively enforced. By doing this, both agent and non-agent operators will be bound to adhere to the Code of Conduct.

The REINSW believes that the government has a role to play in the management of the Code of Conduct, and must be accorded the appropriate resources to manage and enforce it.

3.2 Complaints management

Without doubt, there must be a complaints management system in place. Given the high turnover of short-term holiday letting tenants and the brevity of many of their stays, it's not appropriate for complaints to immediately escalate to the relevant department within the NSW Government or to the NSW Civil and Administrative Tribunal. By the time the complaint is processed, the short-term holiday letting tenant may be long gone.

The REINSW submits that there must be a complaints process enshrined in the legislation. This system should lay out the hierarchy applicable to complaints and their escalation.

In the first instance, the REINSW suggests that complaints should go to the managing agent or the online booking provider (as is relevant to the given situation). The managing agent or the online booking provider would then be bound to follow a stated complaints procedure within a specified timeframe. If the complaint is not resolved to the satisfaction of the parties involved, then escalation would occur – either to the relevant department within the NSW Government or to the NSW Civil and Administrative Tribunal.

3.3 Education

Whatever the regulatory framework that is put in place, education of all stakeholders and participants in the short-term holiday letting sector is essential. Everyone must know what their rights and responsibilities are, so they can act accordingly.

There are a variety of different participants who advertise and let properties in the short-term holiday letting sector, including property owners, longer-term tenants and managing agents.

Managing agents, because of the training they receive to qualify as agents, know and understand the regulatory framework that applies to the short-term holiday letting sector. They are well positioned to operate in accordance with that framework.

However, many properties in the short-term holiday letting market are not managed by agents. There are many private owners and longer-term tenants participating in the sector. Do these non-agent operators know and understand the regulatory framework that applies to the short-term holiday letting sector? The REINSW respectfully suggests that in many instances, they don't.

To ensure compliance with the regulatory framework, the REINSW suggests that non-agent operators should be required to undertake a mandatory short course. Evidence of completion of this course would be required before they could advertise their property online via any of the online booking providers. This would ensure non-agent operators are fully cognisant of their responsibilities, understand the challenges, are aware of the rights of surrounding neighbours and know of the potential issues and problems that may arise. It would help to ensure compliance with any code of conduct that may be enshrined in legislation.

3.4 Monitoring and reporting

The REINSW believes that ongoing monitoring and reporting must take place. This will provide the NSW Government with the information and data they need to make informed decisions about the short-term holiday letting sector and assess whether the regulatory framework is best meeting the needs of all stakeholders and participants.

The REINSW suggests that there should be a requirement that complaints be reported to the regulator on an annual or bi-annual basis. Managing agents should be required to report on the complaints recorded in their complaints register. Equally, online booking providers should be required to report on any complaints registered with them.

4. STRATA REGULATION

4.1 By-laws to manage visitor behaviour

While restricting short-term holiday letting may be viewed as an impingement on the rights of property owners who wish to engage in short-term holiday letting, the impact of the activity on other owner occupiers and longer-term tenants in the strata scheme must be considered.

The concept of "community" is elevated when owning and/or living in a property in a strata scheme, and how an individual lot owner deals with their property can impact others in the scheme. Therefore, any reform must ensure the impact of short-term holiday letting on other owner occupiers and longer-term tenants in the strata scheme is minimised.

The REINSW submits that where a lot owner engages in short-term holiday letting, they have an obligation to provide all short-term holiday letting tenants with an up-to-date copy of the strata scheme's by-laws.

To ensure this obligation is not onerous, the legislation might require that the by-laws be displayed in a prominent place within the property (e.g. on the back of the front door or on the fridge door).

a. Protecting the amenity of owner occupiers and longer-term tenants

There must be a keen focus on preserving the amenity of other owner occupiers and longer-term tenants. The overall amenity of the strata scheme has the potential to be impacted due to a continual turnover of short-term holiday letting tenants who don't have the same vested interest in preserving the existing amenity.

The potential risks to amenity are many and include, but are not limited to:

- **Security** – For example, many strata schemes have security measures in place to control who comes into the building. In circumstances where keys or access cards are provided to a continual turnover of short-term holiday letting tenants, there is the potential for security to be compromised and the safety of other owner occupiers and longer-term tenants to be put at risk.
- **Noise** – For example, many short-term holiday letting tenants are in 'holiday mode' and are partaking in leisure and festive activities. As a result, there is the potential for them to generate more noise and disturb neighbours.
- **Bad behaviour** – For example, in circumstances where the short-term holiday letting tenants are in 'party mode', excessive drinking may result in bad or anti-social behaviour. Further, due to the brevity of their stay, these tenants may have little regard for how their behaviour impacts neighbours.
- **Rubbish disposal** – In general, short-term holiday letting generates a higher volume of waste. For example, perishable items purchased during the stay must be disposed upon leaving. Short-term holiday letting tenants may also be unfamiliar with rules about how and when rubbish is collected.
- **Parking** – For example, short-term holiday letting may generate more demand for parking. In addition, short-term holiday letting tenants may be unfamiliar with building parking rules and occupy spaces reserved for owner occupiers and longer-term tenants.
- **By-law breaches** – For example, some short-term holiday letting tenants may unintentionally breach the by-laws of a strata scheme because they are unfamiliar with the building's rules.
- **Damage** – For example, a higher turnover of tenants may result in excessive wear and tear to a property. In addition, there is a higher risk of specific instances of damage occurring to common property due to luggage and other supplies constantly moving in and out of the building.

While the risks to amenity set out above are also relevant in the case of detached dwellings, strata schemes are more susceptible to them due to the reliance on shared facilities and a higher proportion of whole-premises short-term holiday letting (i.e. with no host present).

Owner occupiers and longer-term tenants must be protected from the potential negative impacts of short-term holiday letting and there must be consequences where amenity is adversely impacted.

Any new regulatory framework must provide mechanisms to promptly correct any actions or activities by short-term holiday letting tenants that negatively impact amenity.

b. Consequences to owners engaging in short-term holiday letting

Lot owners who engage in short-term holiday letting must take some responsibility for the actions and behaviours of the short-term holiday letting tenants they admit into the strata scheme. Therefore, there must be consequences where amenity is adversely impacted.

By way of example, to ensure lot owners are complying with responsibilities when they engage in short-term holiday letting, a “three strikes” system might be put in place. If three complaints are registered (and verified) with the owners corporation or managing agent regarding activity resulting from short-term holiday letting, a six-month ban would be imposed on the lot owner preventing them from engaging in short-term holiday letting. This ban would also be imposed by the online booking providers, who would be legislatively bound to remove the listing immediately.

Knowing the consequences that will flow from any negative impact to amenity should encourage lot owners to more closely manage and monitor the behaviour of their short-term holiday letting tenants.

It should also be acknowledged that where a lot owner chooses to engage in longer-term letting, a series of strict obligations are imposed upon both the lot owner and tenant under the *Residential Tenancies Act 2010* – and when those obligations are breached, there are consequences. Why should it be any different in the case of short-term holiday letting? Surely lot owners and tenants engaging in short-term holiday letting should be similarly bound.

c. Bonds payable by short-term holiday letting tenants

All lot owners in a strata scheme have an interest in the common property, both financially and in terms of amenity. Therefore, if damage due to the activities of a short-term holiday letting tenant occurs, they should have an avenue of recourse to seek compensation for the cost of repairs.

Further, short-term holiday letting tenants should have a degree of accountability for the impact of their behaviour while staying in a lot that is part of a strata scheme.

The REINSW submits that a bond should be paid by the short-term holiday letting tenant at the time of booking and making payment for their stay.

Payment of a bond by the short-term holiday letting tenant would provide the strata scheme with the security of knowing they will be able to draw down on the bond should damage to common property occur. It would also impose a degree of accountability upon the short-term holiday letting tenant.

The bond would be paid to, and held by, the online booking provider or the managing agent, and would not be released back to the short-term holiday letting tenant until authorised by the lot owner.

d. Additional levies or bond payable by the lot owner

Another potential option is to impose an additional levy upon lot owners who engage in short-term holiday letting.

In this context, it's relevant to note that it's not uncommon for owners corporations to require a bond to be paid when various activities are carried out by lot owners. For example, some strata schemes require owners to pay a bond when carrying out renovations to their lot as a way of securing against the possibility of damage to common property caused due to the renovations.

It is also relevant to note that section 82(1) of the *Strata Schemes Management Act 2015* provides that: "If the use to which a lot in a strata scheme is put causes an insurance premium for the strata scheme to be greater than it would if it were not put to that use, so much of the contribution payable by the owner of the lot as it attributable to insurance premiums may with the consent of the owner, be increased to reflect the extra amount of the premium."

Similarly, legislation regulating the short-term holiday letting sector should provide that in circumstances where a lot owner is putting their property to a particular use (e.g. short-term holiday letting) and, as result of that use, damage occurs to the common property, then the strata scheme is able to recover that cost to repair that damage from the lot owner.

4.2 By-laws to receive compensation for adverse effects

Following on from that set out at paragraph 4.1(d) above, the legislation should also provide that in circumstances where a lot owner is putting their property to a particular use and, as a result of that use adverse effects are suffered, then the strata scheme is able to recover compensation for those adverse effects from the lot owner.

4.3 By-laws to prohibit short-term holiday letting

Current strata laws prevent an owners corporation from restricting an owner from letting their lot. This is captured in section 139(2) of the *Strata Schemes Management Act 2015*, which provides that no by-law can prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing relating to a lot.

A recent decision by the NSW Civil & Administrative Tribunal^{*} confirmed that this prohibition on restricting letting extended to short-term holiday letting, and the Tribunal declared by-laws restricting short-term holiday letting to be invalid.

^{*} *Estens v Owners Corporation SP 11825 [2017] NSWCATCD 52*

The REINSW reiterates that we do not believe a blanket prohibition on short-term holiday letting is appropriate. We do, however, believe that strata scheme lot owners should have the right to collectively manage the impact of certain activities within their building, including short-term holiday letting.

a. Special resolution to pass by-laws restricting short-term holiday letting

The *Strata Schemes Development Act 2015* sets out a strata renewal regime to facilitate the collective sale or substantial redevelopment of an entire strata scheme where 75 per cent of lot owners support the proposal. Historically, termination of a strata scheme required unanimous consent or a court order. This meant, in practice, that a single lot owner could block an otherwise unanimous decision to renew or terminate a strata scheme. The new regime gives power back to the majority in a way that does not unfairly disadvantage a vulnerable minority.

Consistent with the approach taken by the new strata renewal regime, the REINSW submits that a similar approach could be taken to regulate or restrict short-term holiday letting in strata schemes.

For example, for a strata scheme to restrict short-term holiday letting there would need to be a special resolution whereby 75 per cent of lot owners vote in favour of the restriction. That special resolution would put in place a by-law restricting short-term holiday letting in the building in specified ways (such as the number of days per year, number of visitors per stay or banning the activity altogether).

The introduction of such a regime would allow owners of strata scheme lots to effectively manage short-term holiday letting activity in their building and the impact it has on the right of other lot owners and tenants to quiet enjoyment of their properties, while still affording property owners the ability to deal with their property in the manner they see fit and earn income from their investment.

As a corollary to the introduction of such a regime, the legislation would also need to provide that where a special resolution restricting short-term holiday letting has been passed by 75 per cent of lot owners, an owner falling within the minority can't then sue the strata scheme for damages (e.g. for lost income).

b. Enforcement of by-laws restricting short-term holiday letting

To effectively police and enforce restrictions on short-term holiday letting, REINSW believes some sort of registration or reporting regime would need to be put in place. Further, to ensure the integrity of any enforcement regime, online booking providers need to be legislatively bound by the scheme and take an active part in policing compliance.

For example, a regime could be put in place requiring any by-law restricting short-term holiday letting to be registered on a centralised portal. Online booking providers would then be required to cross-check properties advertised on their platforms with those on the centralised portal. If a property is being advertised in breach of a registered by-law, the online booking provider would then be required to remove the advertisement.

c. Limiting the number of days per year

The REINSW does not believe that imposing a blanket limitation on the total number of days per year that a property can be let is feasible, nor is it fair.

By way of example, a lot owner may purchase a property with a view to using it themselves as a weekender or holiday home. However, so the property doesn't sit empty during those periods when they're not using it, they want to offer it for short-term holiday stays. The lot owner may only occupy the property themselves for six to eight weeks a year. Limiting their ability to let it out for short-term holiday stays for the other 44 to 46 weeks of the year unfairly restricts their ability to earn income from their investment.

While a blanket limitation is not appropriate, the REINSW believes that in circumstances where 75 per cent of lot owners in the strata scheme vote in favour of limiting the total number of days per year (see paragraph 4.3(a) above), then such a limitation should be able to be imposed.

5. PLANNING REGULATION

Local councils across New South Wales take different approaches to regulating short-term holiday letting within their jurisdictions and the lack of a standardised approach to the sector often leads to confusion. It is the REINSW's view that creating a suitable short-term holiday letting framework via planning regulation has the potential to be unwieldy due to the vast range of scenarios to be accounted for (e.g. different property types, locations and more). Further, while individual councils may have specific planning regulations in place, their ability to enforce those regulations is often limited due to a lack of resources.

The REINSW believes that, to address this lack of consistency and not impinge on already limited council resources, short-term holiday letting should be regulated at a State level (e.g. in strata legislation, residential tenancies legislation and any new short-term holiday letting legislation).

5.1 Development approval

The REINSW does not believe that putting any sort of development approval (DA) process in place is appropriate.

To require owners who wish to engage in short-term holiday letting to obtain a DA would place additional strain on local council resources and inevitably result in delays. Further, local councils would likely attach a cost, which may have the effect of discouraging owners from pursuing short-term holiday letting.

5.2 Limit the length of stay

Where a property is let for less than 90 days, a residential tenancy agreement (in accordance with the *Residential Tenancies Act 2010*) is not required. Therefore, a limit on the length of short-term holiday letting stays is already in place. The REINSW does not believe any further limitation is required.

5.3 Limit the number of days per year

In accordance with our response at paragraph 4.3(c) above, the REINSW does not believe that limiting the total number of days per year that a property can be let is feasible, nor is it fair.

5.4 Limit the number of bedrooms

The REINSW does not believe that limiting the number of bedrooms is feasible. Such a limitation is unfairly restrictive on larger homes. While such a limitation may be viewed as a way to reduce the potential of large gatherings (e.g. 'party houses'), there are better ways to ensure the behaviour and activities of short-term holiday letting tenants do not adversely impact the amenity of surrounding neighbours.

6. REGISTRATION

The REINSW believes there is value in putting a simple registration regime in place. Where an owner wants to engage in short-term holiday letting, they should be required to register their property. This

registration would take place via a centralised registration portal (administered by the NSW Government) and the property would be assigned a registration number. They would then be required to provide this registration number to the managing agent or enter it into the online booking platform when they seek to advertise the property.

Before listing a property, managing agents would be required to do a simple check of the centralised portal to see if the property is registered. Similarly, online booking providers would be required to conduct a check before activating a listing. If a property is not listed as registered on the centralised registration portal, the property would not be able to be advertised.

A requirement to register a property with a centralised portal also means there will be a mechanism in place to identify those properties being listed with online booking providers by longer-term tenants in breach of the terms of their residential tenancy agreement. REINSW members tell of instances where people lease properties under longer-term leases with the intention of never residing in the property themselves. Instead, they list the property via one of the online booking providers at a much higher rent and turn it into an income-producing activity.

It can be difficult for owners and property managers to know that this is happening. Requiring short-term holiday letting properties to be registered would help identify this sort of activity.

Should non-agent operators be required to undertake a mandatory short course before being able to engage in short-term holiday letting (see paragraph 3.3 above), a centralised registration portal would also be a useful means of recording completion of the course. For example, a registration number would not be assigned until the course completion is evidenced.

7. FINAL COMMENTS

The REINSW's review of the *Short-term Holiday Letting in NSW Options Paper* has been very considered, with an emphasis on the smooth application of any new legislation upon commencement. We have maintained a keen focus on providing fair and equitable outcomes for all parties and stakeholders to create a better short-term holiday letting system in NSW.

The REINSW appreciates the opportunity to provide this Submission and welcomes discussion of the issues raised.

Yours sincerely,



Tim McKibbin
Chief Executive Officer
The Real Estate Institute of New South Wales Limited